**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
APPELLATE SIDE
**LETTERS PATENT APPEAL NO.309 OF 2002**
**IN**
**WRIT PETITION NO.1493 OF 2002**

1. Rajendra B. Malu
Adult, Occu: Business
and Social Work, r/o
Chandan, 8th Lane,
Jaysingpur,
District: Kolhapur.

2. Dr. Annasaheb Shamrao
Chopade, Adult, Occ:
Medical Practitioner and
Social Worker, Chopade
Memorial Hospital,
Near Ram Mandir,
Sangli. .... Appellants

- Versus -

1. Sir Willium Wanless Chest
Hospital, through its
Chairman & Trustee Dr.
Shashikant Krishnaji Kurne,
Wanless Wadi, Sangli Miraj
Road, District: Sangli.

2. Joint Charity Commissioner,
Kolhapur Region, Kolhapur.

3. Bharati Vidyapeeth Medical
Foundation, a Public
Charitable Trust, registered
vide PTR No.F-6118 (Pune,
Lal Bahadur Shastri Marg,
Pune).

4. The Director,
Miraj Medical Centre,
Wanless Hospital, Miraj,
District: Sangli.

5. Bishop, Kolhapur Diocesan
Council, E.P. School
Compound, Negala Park,
Kolhapur.

6. Shri Joseph R. Tiwade,
r/o Wanlesswadi,
Tal. Miraj, Dist: Sangli.

7. Baldev Appasaheb Patil,
r/o Gaonbhag, Sangli.

8. Gajanan Ishwara Nirale,
r/o Islampur, Dist: Sangli.

9. Rajaram Poulas Panhalkar,

r/o Wanlesswadi, Miraj,
District Sangli.

10. Smt. Unis A. Chougule,
r/o Wanlesswadi, Miraj,
District Sangli.

11. Ashok Pandu Bhore,
r/o Wanlesswadi, Miraj,
District Sangli.

12. Kamgar Union,
Hindu Muslim Chowk,
Sangli. .... Respondents

Sarvasri Shekhar Naphade, Senior Counsel, with T.S. Ingale for the Appellants.

Sarvasri Mahendra Shah with S.M. Kamble for the Respondent No.1.

Sarvasri K.K. Singhavi, Senior Counsel, with C.J. Sawant i/b S.R. Borulkar for the Respondent No.3.

**WITH**

**LETTERS PATENT APPEAL NO.337 OF 2002**
**IN**
**WRIT PETITION NO.3415 OF 2002**

1. Dr. E.R. Bidari
The Director of Miraj
Medical Center, having
office address at Miraj
Medical Center, Miraj,
Dist-Sangli.

2. The Rt.Rev.Bathuel R.Tiwade,
Bishop of Kolhapur Diocesan,
r/at K.D.C.Office, E.P.
School Compund, Kolhapur
416 003.

3. Miraj Medical Center
at Miraj, District Sangli. .... Appellants

- Versus -

1. Dr. Shashikant K. Kurne,
the Chairman & Trustee of
Sir William Wanless Chest
Hospital Trust, r/a Ashta,
Tal. Walwa, Dist-Sangli.

2. Chandrakant D. Chopade,
r/at "Walu Smruti",
At & Post Kodoli,

Tal. Panhala, Dist:Kolhapur.

3. Rev.Pawlas Bhujang Kamble,
having address at E.P.School
Compound, Kolhapur 416 003.

4. Jaywant Ramu Samudre
r/at Irwin Hostel Compound,
1245, E Ward, Near Shahu
Mills, Kolhapur 416 008.

5. Joseph R. Tiwade & others
r/at Wanless Wadi,
416414, Tal.Miraj,
Dist-Sangli.

6. Baldeo A. Patil,
r/o Gaonbhag, Sangli.

7. Gajanan Ishwara Nirale,
r/o Islampur, Dist-Sangli.

8. Rajaram P. Panhalkar &
another, r/o Wanlesswadi,
Miraj.

9. Smt. Unis A. Chougule,
r/o Wanlesswadi, Miraj.

10. Ashok Pandu Bhore,
r/o Wanlesswadi, Miraj.

11. Kamgar Union,
Wanless Wadi, Miraj.

12. Bharati Vidyapeeth Medical
Foundation, L.B. Shastri
Marg, Pune-411 030. .... Respondents

Sarvasri Dinyar Madan with S.P. Thorat for
the Appellants.

Sarvasri K.K. Singhavi, Senior Counsel, with
A.V. Anturkar i/b S.R. Borulkar for the
Respondent No.12.

**AND**

**LETTERS PATENT APPEAL NO.32 OF 2004**
**IN**
**CIVIL APPLICATION NO.1868 OF 2002**
**IN**
**WRIT PETITION NO.2235 OF 2002**

1. Baldev Appasaheb Patil,
residing at Appasaheb
Girale College, Sangli.

2. Gajanan Ishwara Nirale,

residing at Islampur,
Taluka: Sangli Miraj,
Dist. Sangli. .... Appellants

- Versus -

1. Sir William Warness Chest Hospital, through Chairman Trustee Dr. Shashikant K. Kurane, Walness Wadi, Sangli Miraj Road, Dist: Sangli.

2. Joint Charity Commissioner Kolhapur Region, Kolhapur.

3. Bharati Vidyapeeth Medical Foundation, a Public Charitable Trust, registered vide PTR No.T-6118 (Pune)/ Lal Bahadur Shastri Marg, Pune-411 030.

4. The Director, Miraj Medical Centre, Wanless Hospital Marg, District: Sangli.

5. Bishop, Kolhapur Diocesan Council, E.P. School Compound, Nagala Park, Kolhapur.

6. Jacob Ranoji Tiwade, r/o Walneaswadi, Taluka Miraj, Dist: Sangli.

7. Rajaram Poulas Panthalkar r/o Walneaswadi, Miraj, District Sangli.

8. Smt. Unnis A. Chougule, r/o Walneaswadi, Miraj, District Sangli.

9. Ashok Pandu Bhore, r/o Walness Wadi, District Sangli.

10. Kamgar Union, Hindu Muslim Chowk, Sangli. .... Respondents

Shri G.M. Savagave for the Appellants.

Sarvasri Mahendra Shah with S.M. Kamble for the Respondent No.1.

Sarvasri K.K. Singhavi, Senior Counsel, with A.V. Anturkar i/b S.R. Borulkar for the Respondent No.3.

**CORAM:** R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

**DATED:** 2/8/2005

**ORDER (Per R.M.S.Khandeparkar, J.):**

1. All these three petitions arise from three different orders passed by the learned single Judge. As regards the Letters Patent Appeals Nos.309 and 337 of 2002 are concerned, they arise from the orders dated 27-7-2002 passed in Writ Petitions Nos.1493 and 3415 of 2002 dismissing the petitions while the Letters Patent Appeal No.32 of 2004 arises from the order dated 11-12-2002 passed in Writ Petition No.2235 of 2002 dismissing the said writ petition. All the three writ petitions were filed challenging the order passed by the Joint Charity Commissioner under Section 36 of the Bombay Public Trusts Act, 1950, hereinafter called as "the said Act".

2. The respondents have sought to raise a preliminary objection regarding the maintainability of the Letters Patent Appeals against the impugned orders on the ground that the same have been passed in exercise of the power under Article 227 of the Constitution of India and that therefore no Letters Patent Appeal lies against such order. Drawing attention to Section 36 of the said Act, Shri K.K. Singhavi, Senior Counsel, submitted that the Charity Commissioner discharges judicial function while considering the issue relating to the sanction for disposal of the property of the Trust and the said exercise encompasses an inquiry by the authority having trapping of the Court and the same is obvious from Rule 7 of the Bombay Public Trusts Rules, 1951, hereinafter

called as "the said Rules". Reliance is sought to be placed in the decision of the learned single Judge of this Court in the matter **Girdhar C. Nichani v. Rev.E.H.Lewellen and another,** reported in 1991 Mh.L.J. 891 as well as of the Division Bench in the matter of **Kondiba Dhondiba Dalvi since deceased by his legal representatives Chandrabhagabai Kondiba Dalvi (smt.) & others v. Narayan Namdeo Nanware (Shri),** reported in 2000 (Supp.) Bom.C.R. 844 and **K. Shamrao and others v. Assistant Charity Commissioner,** reported in (2003) 3 SCC 563. Attention was also drawn to the memo of the writ petition filed before the learned single Judge in Writ Petition No.1493 of 2002 and particularly the grounds of challenge and the relief which was asked for while contending that the same clearly disclose the nature of the petition warranting exercise of powers by this Court under Article 227 of the Constitution of India. The said arguments were also adopted by the Advocates appearing in two other appeals.

3. Shri Shekhar Naphade, Senior Counsel, appearing for the appellants, on the other hand, submitted that the function of the Charity Commissioner under Section 36(1) of the said Act is that of an administrative nature and it does not involve any judicial function as such. Referring to Section 40 r/w Section 72 of the said Act, it was sought to be argued that the exercise under those provisions would definitely be a judicial function but Section 36(1) which merely speaks of grant or refusal of sanction for disposal of the property cannot be construed as a judicial function. In fact, it relates to the powers and duties as well as restrictions on the

rights of the trustees in the matter of management of the trusts and this is apparent from the title of Chapter V-A whereunder the Section 36 is to be found. He has also referred to Section 50A while submitting that the nature of exercise of power thereunder would be said to be of a quasi-judicial nature. At the same time, he has not disputed that the exercise of power under sub-section (2) of Section 36 would be a judicial function in the sense that the party objecting to the grant of sanction will have to be heard and the rights will have to be adjudicated and in that sense it would be adjudicated between two parties. Alternatively it was sought to be argued by Shri Naphade that assuming that the authority under Section 36(1) performs judicial function or is required to act judiciously, it does not make him a Court or even a Tribunal because such an exercise merely establishes that he follows certain standard of conduct and the decision arrived at has to be free from bias. It does not involve adjudication of rights of the parties or lis between two parties as such, which is ordinarily dealt with by a Court and therefore, according to the learned Advocate, the term "Courts" spoken of under Article 227 refers to or contemplates Courts of Civil Judicature and not the Tribunals other than those Courts. Attention was sought to be drawn to the decision in the matter of **Harinagar Sugar Mills Ltd., v. Shyam Sundar Jhunjhunwala and others,** reported in AIR 1961 SC 1669.

4. Undisputedly, the orders under challenge in the appeals relate to the rejection of the petitions which were filed challenging the orders passed by the Joint

Charity Commissioner sanctioning the sale of the land belonging to a public trust. Undisputedly therefore, the orders which were under challenge before the learned single Judge and in respect of which the impugned orders have been passed related to the exercise of powers by the Joint Charity Commissioner under Section 36(1) of the said Act.

5. The Section 36(1) of the said Act is to be found in Chapter V-A and the said Chapter deals with the subject of powers and duties of, and restriction on, trustees. The sub-title of Section 36 reads "Alienation of immovable property of public trust". The relevant portion of sub-section (1) of Section 36 reads thus:-

> "(1) Notwithstanding anything contained in the instrument of trust -
>
> (a) no sale, exchange or gift of any immovable property, and
>
> (b) .....
>
> (c) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust."

In terms of Section 69(g) the Charity Commissioner is specifically empowered to perform the duties, functions and powers relating to sanction of a sale, mortgage, exchange, gift or lease of immovable property belonging to a public trust under Section 36. Under Section 3A the State Government is empowered to appoint Joint Charity Commissioner who shall, subject to the control of the Charity Commissioner and to such general or special orders as the State Government may pass, exercise all or any of the powers and perform all or any of the duties and functions, of the Charity Commissioner under the said Act. The Rule 7 of the said Rules provides that except as otherwise provided in the said Act and the said Rules, inquiries under or for the purpose of Section 36, apart from the various other specified sections, which the Charity Commissioner may direct to be held for the purpose of the Act shall be held, as far as possible, in the Greater Bombay Region in accordance with the procedure prescribed for the trial of suits under the Presidency Small Cause Courts Act, 1882, and elsewhere under the Provincial Small Cause Court Act, 1887. The Section 73 of the said Act provides that in holding inquiries under the said Act, the officer holding the same shall have the same powers as are vested in Courts under the Code of Civil Procedure while trying a suit inspect of proof of facts by affidavits, summoning and enforcing the attendance of any person and examining him on oath, ordering discovery and inspection, and compelling the production of documents and issuing of commissions.

6. In order to obtain sanction for sale or disposal of the immovable property of a public trust, a proper application in that regard is required to be filed in accordance with the Rule 24 of the said Rules. The Rule 24(1) requires that every such application for sanction of an alienation shall contain information as to whether the instrument of trust contains any directions as to alienation of the immovable property, what is the necessity for the proposed alienation, how the proposed alienation is in the interest of the public trust, and the application is required to be accompanied by a valuation report of an expert. Under sub-rule (2), the Charity Commissioner, before according or refusing sanction, may make such inquiry as he may deem fit, and under sub-rule (3) while according sanction, the Charity Commissioner may impose such conditions or give such direction as he may deem fit.

7. The above provisions of law obviously disclose that the authority to grant or refuse sanction by the Commissioner under the said Act has to be exercised on proper application of mind and is required to be preceded by necessary inquiry as the Commissioner, in the facts and circumstances of each case, may deem fit and proper. Such inquiry has necessarily to be preceded by the relevant information being furnished to the Commissioner in relation to the property which is sought to be alienated. The information should necessarily include as to whether the instrument of trust provides for any direction or provision in relation to alienation of such properties. It should disclose the cause and necessity for the proposed alienation. It should also

reveal as to whether the proposed alienation is in the interest of the public trust. Obviously it is not a mere statement in that regard but the facts which would disclose as to how the interest of the public trust would be served will have to be disclosed by the trustees approaching for sanction for alienation of a property of the trust. It should also disclose the value of the property duly assessed by the person competent to evaluate the same. All these factors taken together would reveal that the inquiry contemplated before grant or refusal of sanction is not merely an administrative inquiry but it necessarily warrants judicial approach on the part of the Commissioner and to ensure that the property and the interest of the public trust are not adversely affected. Undoubtedly, it would also involve an administrative function on the part of the Commissioner but at the same time the inquiry contemplated would be a judicial inquiry.

8. In **Jaswant Sugar Mills Ltd., Meerut v. Lakshmi Chand and others,** reported in AIR 1963 SC 677, the Apex Court had the occasion to deal with the question as to whether a decision is judicial or purely an administrative one and in that regard had ruled thus:-

> "11. Question whether a decision is judicial or is purely administrative, often arises when jurisdiction of the superior courts to issue writs of certiorari is invoked. Often the line of distinction between decisions judicial and administrative is thin:

but the principles for ascertaining the true character of the decisions are well-settled. A judicial decision is not always the act of a judge or a tribunal invested with power to determine questions of law or fact: it must however be the act of a body or authority invested by law with authority to determine questions or disputes affecting the rights of citizens and under a duty to act judicially. A judicial decision always postulates the existence of a duty laid upon the authority to act judicially. Administrative authorities are often invested with authority or power to determine questions, which affect the rights of citizens. The authority may have to invite objections to the course of action proposed by him, he may be under a duty to hear the objectors, and his decision may seriously affect the rights of citizens but unless in arriving at his decision he is required to act judicially, his decision will be executive or administrative. Legal authority to determine questions affecting the rights of citizens, does not make the determination judicial: **it is the duty to act judicially which invests it with that character. What distinguishes an act judicial from**

**administrative is therefore the duty imposed upon the authority to act judicially.**"

(emphasis supplied)

9. The Apex Court in **Jaswant Sugar Mills'** case (supra) had reiterated the observations of Mukheraja J. in the **Province of Bombay v. K.S. Advani,** reported in AIR 1950 SC 222 wherein it was observed that:-

> "Every judicial act presupposes the application of judicial process. There is well marked distinction between forming a personal or private opinion about a matter, and determining it judicially. In the performance of an executive act, the authority has certainly to apply his mind to the materials before him; but the opinion he forms is purely subjective matter which depends entirely upon his state of mind. It is of course necessary that he must act in good faith, and if it is established that he was not influenced by any extraneous consideration, there is nothing further to be said about it. In a judicial proceedings, on the other hand, the process or method of application is different. The

judicial process involves the application of a body of rules or principles by the technique of a particular psychological method, vide Robson's Justice and Administrative Law p.33. It involves a proposal and an opposition, and arriving at a decision upon the same on consideration of facts and circumstances according to the rules of reason and justice, vide R. v. London County Council, (1931) 2 KB 215 at p.233. It is not necessary that the strict rules of evidence should be followed: the procedure for investigation of facts or for reception of evidence may vary according to the requirements of a particular case. There need not be any hard and fast rule on such matters, but the decision which the authority arrives at, must not be his 'subjective', 'personal' or 'private' opinion. It must be something which conforms to an objective standard or criterion laid down or recognised by law, and the soundness or otherwise of the determination must be capable of being tested by the same

> external standard. This is the essence of a judicial function which differentiates it from an administrative function; and whether an authority is required to exercise one kind of function or the other depends entirely upon the provisions of the particular enactment. x x x x x Generally speaking where the language of a statute indicates with sufficient clearness that the personal satisfaction of the authority on certain matters about which he has to form an opinion founds his jurisdiction to do certain acts or make certain orders, the function should be regarded as an executive function."

10. The Apex Court had further observed in Jaswant Sugar Mills' case that:-

> "If may be observed that Mukherjee J., was on the ultimate decision in the case, in the minority, but the principle enunciated by him had substantially the approval of the Court. Das J., in the same case at p.719 (of SCR): (at p.257 of AIR) observed:
>
> "a person entrusted to do an

> administrative act has often to determine questions of fact to enable him to exercise his power. He has to consider facts and circumstances and to weigh pros and cons in his mind before he makes up his mind to exercise his power just as a person exercising a judicial or quasi-judicial function has to do."

11. The Apex Court then held that to make a decision or an act judicial, the following criteria must be satisfied:

> 1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules;
>
> 2) it declares rights or imposes upon parties obligations affecting their civil rights; and
>
> 3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the

> dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact."

12. The law, therefore, is very clear on the point that it is not mere authority to determine the questions affecting the rights of a citizen that make the determination judicial but it is the duty to act judiciously which invest it with that character. Considering the provisions of law comprised under the said Act and the said Rules in relation to the issue pertaining to the sanction for alienation of the property of the public trust, it is apparent that the duty which is cast upon the Commissioner to act judiciously while holding the inquiry before arriving at the decision to grant or refuse sanction. Entrustment of such a statutory obligation contemplates the inquiry to be a judicial in nature and consequently the function of the Commissioner under Section 36 partakes the shape of the judicial function.

13. The learned single Judge in **Girdhar Nichani's** case (supra) had held that the Charity Commissioner under Section 36 definitely discharges the judicial function and the order passed by the Charity Commissioner is determinative, having finality, authoritatively binds the parties. It exercises the power judicially as conferred by the Statute and necessarily it has the trappings of the Court for the purpose of Article 227 of

the Constitution. It is further held that considering the provisions of Section 51 of the said Act, the Charity Commissioner is under the judicial subordination of the High Court within the meaning of Article 27 of the Constitution.

14. In view of the majority decision of the Apex Court in Jaswant Sugar Mills' case, the view based on the minority decision expressed in **Harinagar Sugar Mills's** case (supra) cannot enure to the benefit of the appellants to contend that the exercise of power by the Charity Commissioner under Section 36 is an administrative function and not judicial function.

15. The Division Bench of this Court in **Kondiba Dhondiba Dalvi's** case (supra), referring to para 99 of the Apex Court judgment in **Umaji Keshao Meshram and others v. Smt. Radhikabai and another** {AIR 1986 SC 1272}, it held that one of the test which is to be applied for ascertaining whether the petition under Article 226 or 227 of the Constitution of India is to ascertain the relief prayed for in the petition. The Apex Court in **Umaji Keshao Meshram's** case (supra) had held under Article 226, the High Courts have power to issue directions, orders and writs, which power is not the same as power of superintendence. It was held that:

> "The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate Courts and Tribunals act within the limits of their

authority and according to law."

It was further observed that:

> "Though at the first blush it may seem that a writ of certiorari or a writ of prohibition partakes of the nature of superintendence in as much as at times the end result is the same, the nature of the power to issue these writs is different from the supervisory or superintending power under Article 227. The powers conferred by Article 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same."

16. Perusal of the writ petitions which were filed before the learned single Judge and particularly the relief prayed thereunder, it is apparent that the interference which was sought was in supervisory capacity. It was merely to quash the orders passed by the Joint Charity Commissioner and consequently, the sanctions granted for the alienation of the property of the trust.

17. It is well-settled that merely because an order is passed in the course of administration of the assets of an institution, it does not make the order purely an

administrative order, distinct from a judicial order. Whether a matter involves a judicial process as distinct from purely administrative process, one of the tests that could be applied is to ascertain whether the matter requires exercise of discretion by the authority deciding the matter and if such discretion is essentially to be exercised objectively as distinct from purely subjective consideration, certainly it would involve a judicial approach and therefore will be a judicial function of such authority. Undoubtedly, sometimes it is said that for judicial proceedings, it is necessary to have the presence of two parties and a lis between them, which is the subject of adjudication as a result of which the order or decision on an issue between the proposal and opposition is arrived at . However, in this regard, the Apex Court in **Shankarlal Aggarwala and others v. Shankarlal Poddar and others,** reported in AIR 1965 SC 507 has clearly held that:-

> "No doubt, it would not be possible to describe an order passed deciding a lis before the authority, that it is not a judicial order but it does not follow that the absence of a lis necessarily negatives the order being judicial."

18. Sanction for alienation of the property contemplated under Section 36 of the said Act relates to the rights of the trustees of a public trust in relation to the management and disposal of the property. Therefore, grant or refusal of sanction for alienation will relate to the right to the property of the public

trust. The decision regarding the right to alienation, either concurrence thereto or refusal thereto would be a subject of investigation and adjudication by the Commissioner bearing in mind the best interest of the trust and on such investigation and adjudication the Commissioner would decide whether to grant or refuse the sanction for alienation. Certainly, it would involve the exercise of discretion by the Commissioner; however, the discretion will have to be exercised objectively and in the best interest of the trust as distinct from purely subjective consideration thereof and, therefore, it would be a judicial function and has to be judicious decision of the Commissioner on the point of grant or refusal of the sanction for alienation of the property.

19. It is also to be noted that the Apex Court in **K. Shamrao and others v. Assistant Charity Commissioner,** reported in (2003) 3 SCC 563 has held that:-

> "The scheme of the Act, the powers conferred on the Assistant Charity Commissioner and the perusal of the aforesaid provisions of the Act clearly show that the Assistant Charity Commissioner has to be a judicial officer or an officer with a legal background; has to hear parties wherever dispute is raised with regard to existence of a public trust or with regard to a property being trust property or otherwise and then give a

> definitive judgment after taking evidence having regard to the facts of the case and by application of law. The judgment is final unless interfered with in appeal or thereafter tested in appeal before the High Court. The jurisdiction of the civil court has been barred in the matters inquired into and decided by the Assistant Charity Commissioner."

It is further held therein that:

> "the Assistant Charity Commissioner has not only the trappings of a judicial tribunal but also has power to give a decision or a definitive judgment which has finality and authoritativeness which are essential tests of a judicial pronouncement. The Assistant Charity Commissioner, therefore, possesses all the attributes of a court. ..... for coming to the conclusion that he is not a court, having regard to the provisions of the Act which substantially confer on him the power to give a definite judgment subject to finality in appeal, after hearing all concerned. Functions of the Assistant Charity Commissioner are predominantly adjudicatory. The Assistant Charity Commissioner has almost all the powers which an ordinary civil court has including power of

summoning witnesses, compelling production of documents, examining witnesses on oath and coming to a definite conclusion on the evidence induced and arguments submitted."

20. The Division Bench of this Court in **Dr. Vivekanand Atmaram Chitale and another v. Vidya Vardhini Sabha and others,** reported in 1985 Cri.L.J. 359 had held that the Charity Commissioner or Deputy or Assistant Charity Commissioner, while acting under Section 51 of the Act performs judicial functions and not purely administrative functions, and his decision is judicial or quasi-judicial in character.

21. The arguments canvassed on behalf of the appellants that sub-section (2) of Section 36 could be a judicial function but not under Section 36(1) of the said Act cannot be accepted. The procedure to be followed for adjudicating the issue regarding grant of sanction as well as for revocation of sanction is not different from one another. In both the cases, the provisions of Rule 7 of the said Rules are attracted and all other powers available to be exercised at the time of grant of sanction are also available and expected to be exercised while dealing with the complaint against the grant of sanction or for the purpose of revocation of sanction once granted. Therefore, the arguments that the nature of function under Section 36(2) is to be distinct from the one under Section 36(1) of the said Act does not appeal to our mind.

22. The power to be exercised, the proceedings to be conducted and the order to be passed under Section 36(1) cannot be said to be purely of administrative nature but it involves judicial process and therefore it is a judicial function resulting in an order passed after proper application of mind and due exercise of discretion, objectively on the basis of the materials placed before it and the inquiry conducted by the Commissioner for that purpose. Hence the authority acting under Section 36(1) of the said Act cannot be said to be purely an administrative authority or performs administrative functions and for the same reason the orders cannot be construed as purely of administrative nature. Being so, the authority functioning under Section 36(1) of the said Act is subject to superintendence of the High Court under Article 227 of the Constitution of India. In the case in hand, before the learned single Judge not even an objection was raised for exercise of power under Article 227 of the Constitution of India. The impugned orders have been passed in exercise of such powers under Article 227 of the Constitution. Hence the preliminary objection sought to be raised on behalf of the respondent No.3 is well-founded and therefore the appeals are to be held as not maintainable and liable to be dismissed for the reasons stated hereinabove and are accordingly hereby dismissed, with no order as to costs.

**(Anoop V. Mohta, J.)** **(R.M.S. Khandeparkar, J.)**